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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,931	04/30/2001	Manuel Gonzalez	60004114-1	9896

7590 09/24/2004
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER

NGUYEN, PHUOC H

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/843,931

Applicant(s)

GONZALEZ ET AL.

Examiner

Phuoc H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-26 are rejected under 35 U.S.C. 102(e) as being anticipated by

Engbersen et al (Hereafter, Engbersen) U.S. Pat. No. 6,341,304.

3. Regarding claim 1, Engbersen discloses in Figure 3 a method of transmitting information from a first device (server to download from) to a second device (start point in 301 or client to download to), the method comprising steps of: comparing a data transfer rate to a predetermined threshold (309 and 311), data transfer rate being related to the rate of transmission of information from first device to second device (309 wherein checking the available bandwidth); transmitting information from first device during a scheduled period of time in response to data transfer rate exceeding predetermined threshold (if yes, go to 315 to download); and preventing a transmission of information at a beginning of scheduled period of time in response to data transfer rate not exceeding predetermined threshold (313).

4. Regarding claim 2, Engbersen further discloses in Figure 3 step of comparing a data transfer rate to a predetermined threshold further comprises steps of: determining

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whether a retry period of time has ended in response to data transfer rate being below predetermined threshold (313); canceling transmission of information during scheduled period of time in response to retry period of time ending (abort in 313), and comparing a re-measured data transfer rate to predetermined threshold in response to retry period of time not ending (loop feedback into the beginning system to 303).

5. Regarding claim 3, Engbersen further discloses in Figure 3 step of comparing a data transfer rate to a predetermined threshold comprises steps of: determining whether a proximate end to scheduled period of time has occurred in response to retry period of time continuing, proximate end being an instance in time prior to an end of scheduled period of time, such that a transmission beginning at the proximate end completes prior to the end of scheduled period of time (inherently); canceling transmission of information during scheduled period of time in response to an occurrence of proximate end; and performing step of comparing re-measured data transfer rate to predetermined threshold in response to proximate end to scheduled period of time not occurring (313 and col. 4 lines 25-29).

6. Regarding claim 4, Engbersen further discloses in Figure 3 step of transmitting information from first device further comprises a step of transmitting information from first device during scheduled period of time in response to re-measured data transfer rate exceeding predetermined threshold (317 and 319).

7. Regarding claim 5, Engbersen further discloses in Figure 3 comparing a data transfer of transmitting information to predetermined threshold; and terminating transmission of information in response to data transfer rate not exceeding predetermined threshold (323 to 313).

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8. Regarding claim 6, Engbersen further discloses in Figure 3 step of transmitting information from first device further comprises steps of: determining whether a retry period of time has ended in response to data transfer rate not exceeding predetermined threshold (313 and col. 4 lines 25-29); canceling transmission of information during scheduled period of time in response to retry period of time ending (abort in 313); and comparing a re-measured data transfer rate to predetermined threshold in response to proximate end to scheduled period of time not occurring (feedback into the beginning system in Figure 3).
9. Regarding claim 7, Engbersen further discloses in Figure 3 of transmitting information from first device further comprises a step of transmitting information from first device during scheduled period of time in response to re-measured data transfer rate exceeding predetermined threshold (311 with yes path link).
10. Regarding claim 8, Engbersen further discloses in Figure 3 step of comparing is performed by first device (col. 3 lines 64-68 with PUSH).
11. Regarding claim 9, Engbersen further discloses in Figure 3 step of comparing is performed by second device (col. 3 lines 64-68 with GET).
12. Regarding claim 10, Engbersen further discloses in Figure 3 a step of requesting information from first device prior to step of comparing, information includes scheduled period of time (303, 307, and 309).
13. Regarding claim 11, it is a system claim of claim 1. Thus, claim 11 is also rejected under the same rationale as cited in the rejection of rejected claim 1.
14. Regarding claim 12, it is a system claim of claim 1. Thus, claim 12 is also rejected under the same rationale as cited in the rejection of rejected claim 1.

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15. Regarding claim 13, it is a system claim of claim 2. Thus, claim 13 is also rejected under the same rationale as cited in the rejection of rejected claim 2.

16. Regarding claim 14, Engbersen further discloses in Figure 3 first device is a server in network and second device is a client in network (Figure 5).

17. Regarding claim 15, Engbersen further discloses in Figure 3 first device is operable to compare data transfer rate to predetermined threshold (309 and 311).

18. Regarding claim 16, Engbersen further discloses in Figure 3 second device is operable to compare data transfer rate to predetermined threshold (309 and 311).

19. Regarding claim 17, it is a computer medium claim of claim 1. Thus, claim 17 is also rejected under the same rationale as cited in the rejection of rejected claim 1.

20. Regarding claim 18, it is a computer medium claim of claim 2. Thus, claim 18 is also rejected under the same rationale as cited in the rejection of rejected claim 2.

21. Regarding claim 19, it is a computer medium claim of claim 2. Thus, claim 19 is also rejected under the same rationale as cited in the rejection of rejected claim 2.

22. Regarding claim 20, Engbersen further discloses in Figure 3 step of comparing is performed during transmission of information and step of preventing further comprises a step of: terminating transmission of information at a beginning of scheduled period of time in response to data transfer rate not exceeding predetermined threshold (313 and col. 4 lines 25-29).

23. Regarding claim 21, Engbersen further discloses in Figure 3 network node connected to a network, network node being operable to: transmit information at a scheduled period of time on a communication path in network when a data transfer rate for communication path exceeds a predetermined threshold (307, 309, and 311), prevent

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transmission of information in response to data transfer rate not exceeding predetermined threshold (313); determine whether a retry period of time has ended in response to data transfer rate being below predetermined threshold; cancel transmission of information during scheduled period of time in response to retry period of time ending; and compare a re-measured data transfer rate to predetermined threshold in response to retry period of time not ending (feedback into the beginning the system and re-measure periodically 317).

24. Regarding claim 22, it has limitations cited in claim 3. Thus, claim 22 is also rejected under the same rationale as cited in the rejection of rejected claim 3.

25. Regarding claim 23, Engbersen further discloses in Figure 3 network node is further operable to transmit information during scheduled period of time in response to re-measured data transfer rate exceeding predetermined threshold (317 and 319).

26. Regarding claim 24, Engbersen further discloses in Figure 3 network node transmits information and network node is further operable to: compare a data transfer rate of transmitting information to predetermined threshold (319 and 323); and terminate transmission of information in response to data transfer rate not exceeding predetermined threshold (go to 313).

27. Regarding claim 25, Engbersen further discloses in Figure 3 network node includes at least one server (Figure 5).

28. Regarding claim 26, Engbersen further discloses in Figure 3 network node is operable to be connected to at least one client via network and transmit information at a scheduled period of time on communication path to at least one client when data transfer rate for communication path exceeds predetermined threshold (Figures 3 and 5).

Conclusion

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Maddalozzo et al. U.S. Patent No. 5,974,460 disclose an apparatus and method for selecting an optimum telecommunications link.

Boucher et al. U.S. Patent No. 6,393,487 disclose a passing a communication control block to a local device such that a message is processed on the device.

Kindell et al. U.S. Patent No. 5,630,067 disclose a system for the management of multiple time-critical data streams.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 703-305-5315. The examiner can normally be reached on Mon -Thu (7AM-4: 30PM) and off every other Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on 703-308-5221. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phuoc H. Nguyen
Examiner
Art Unit 2143

September 14, 2004


JACK B. HARVEY
SUPERVISORY PATENT EXAMINER